

if advantageous to him, he could not compel a performance." And after citing other authorities to the same effect, the Court of Appeals say, as the result of the cases, that, "it is now established, that unless there is to be found, *in the contract*, this essential ingredient of mutuality, a court of equity will not compel its specific execution," and in that very case, the court said a decree for a specific execution would be refused upon the application of the party not bound by the stipulations of the contract, against the opposite party, although the party making application had been in the enjoyment of, and been actually working the ore mine which was the subject of it. In other words, as I understand the decision, the right to a specific execution of a contract, so far as this question of mutuality is concerned, depends upon whether the *agreement itself* is obligatory upon both parties, so that upon the application of either, against the other, the court would coerce a specific performance. If this be the true exposition of the case referred to, and the doctrine is, that this court will not compel one party to perform a contract, unless by *the contract itself* the power of the court would be used against the opposite party, if called upon, then it follows that a party not bound by the agreement itself has no right to call upon the judicial authority to enforce performance against the other contracting party, by expressing his willingness in his bill to perform his part of the agreement. His right to the aid of this court does not depend upon his subsequent offer to perform the contract upon his part, when events may have rendered it advantageous to do so, but upon its originally obligatory character, as was said by *Lord Redesdale*, "this would not be equity, that a party not bound by the agreement itself should be permitted at his option, and when he finds it to his advantage to do so, to compel the other party to perform, when, if the advantage was the other way, he could not himself be coerced to performance on his part."

The contract in this case, and which this bill seeks to have specifically executed, is not signed by Duvall, the complainant, and it seems to me clear, that if disposed to resist, he could not be compelled to execute it as a written contract. His name is